Supreme Court, U.S.
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No. 86-541

IN THE

Supreme Court Of The United States

October Term, 1986

MICHAEL WALLACE, et al.,
Petitioners

vs.

ALLEGHENY-LUDLUM INDUSTRIES, INC., et al.,
Respondents

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

F. A. FLOWERS, III
3000 SouthTrust Tower
Birmingham, Alabama 35203
(205) 251-3000

Counsel for Respondent,
USX Corporation

OF COUNSEL:

BURR & FORMAN
3000 SouthTrust Tower
Birmingham, Alabama 35203
(205) 251-3000

PARTIES IN THE COURT BELOW

The following persons were parties in the court below:

1. The United States of America ..... Plaintiff-Appellee
2. Michael Wallace ..... Intervenor-Appellant
3. Eric C. Smith ..... Intervenor-Appellant
4. Alfonzo Frazier, Jr. ..... Intervenor-Appellant
5. Betty Stafford ..... Intervenor-Appellant
6. W. P. Kallaher, Jr. ..... Intervenor-Appellant
7. Jim Latner ..... Intervenor-Appellant
8. United States Steel Corporation ..... Defendant-Appellee
9. United Steelworkers of America, AFL-CIO-CLC ..... Defendant-Appellee

INFORMATION REQUIRED BY RULE 28.1

Respondent, USX Corporation, formerly known as United States Steel Corporation, is a corporation incorporated under the laws of the State of Delaware, and its principal place of business is in Pittsburgh, Pennsylvania. USX Corporation is not a subsidiary of any other company, and all of its subsidiaries are listed below:

1. Bessemer and Lake Erie Railroad Company
2. Birmingham Southern Railroad Company
3. Carnegie Natural Gas Company
4. Duluth, Missabe and Iron Range Railway Company
5. Elgin, Joliet and Eastern Railway Company
6. Navios Corporation
7. Navios Ship Management Services, Inc.
8. Ohio Barge Line, Inc.
9. Percy Wilson Mortgage and Finance Corporation
10. The Pittsburgh & Conneaut Dock Company
11. RMI Company
12. Quebec Cartier Mining Company
13. Union Railroad Company
14. United States Steel International, Inc.
15. USS Engineers and Consultants, Inc.
16. USS Great Lakes Fleet, Inc.
17. USS Great Lakes Fleet Services
18. USS Max Tech Co., Inc.
19. USS Oilwell Supply Company, Inc.
20. USS Lake Transport, Inc.
21. USS Western Hemisphere, Inc.
22. U.S. Steel Credit Corporation
23. U.S. Steel Mining Co., Inc.
24. Warrior & Gulf Navigation Company
25. Emro Land Company
26. Marathon Finance Company
27. Deutsche Marathon Petroleum GmbH
28. Hancock Shipping Company, Limited

29. Marathon International Oil Company
30. Marathon International Petroleum (G.B.) Limited
31. Marathon International Petroleum Supply Company
32. Marathon Marine, Inc.
33. Marathon Oil Company
34. Marathon Oil North Sea (G.B.) Limited
35. Marathon Oil U.K., Ltd.
36. Marathon Petroleum Angola, Ltd.
37. Marathon Petroleum Australia, Ltd.
38. Marathon Petroleum Company, Inc.
39. Marathon Petroleum Company (Norway)
40. Marathon Petroleum Egypt, Ltd.
41. Marathon Petroleum Indonesia, Ltd.
42. Marathon Petroleum Ireland, Ltd.
43. Marathon Petroleum Kenya, Ltd.
44. Marathon Petroleum Libya, Ltd.
45. Marathon Petroleum Norte Brazil, Ltd.
46. Marathon Petroleum Syria, Ltd.
47. Marathon Petroleum Tunisia, Ltd.
48. Marathon Pipe Line Company
49. Pan Ocean Energy Company
50. Pan Ocean Oil Corporation (Abu Dhabi)
51. USS Portfolio, Inc.

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vs.

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ON A PETITION FOR A WRIT OF CERTIORARI
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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioners' statement of the case is not entirely complete. Accordingly, respondent, USX Corporation, known as United States Steel Corporation ("U.S. Steel") during the proceedings below, is forced to provide its own statement of the case in order for the Court to fully understand the issue presently under consideration.

On April 12, 1974, the United States, on behalf of the Secretary of Labor and the Equal Employment Opportunity Commission ("EEOC"), filed a complaint in the United States District Court for the Northern District of Alabama. Nine ma-

jor steel companies,[1] including U.S. Steel, and the United Steelworkers of America, AFL-CIO ("the Union"), were named as defendants. The suit involved some 240-250 plants at which more than 300,000 persons were employed, over one-fifth of whom were black, Latin American, or female. *United States v. Allegheny-Ludlum Industries, Inc.*, 63 F.R.D. 1, 3 (N.D. Ala. 1974). Alleging massive patterns and practices of hiring and job assignment on the basis of race, sex, and national origin, the complaint sought to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and contractual obligations under Executive Order 11246, as amended.

The filing of the complaint culminated more than six months of intensive, hard-fought negotiations between the parties. Simultaneously with the filing of the complaint, the parties announced to the court that a nationwide settlement had been reached. *United States v. Allegheny-Ludlum Industries, Inc.*, 63 F.R.D. at 3. Accordingly, two consent decrees were presented to the court for approval. Describing the decrees as "a thoughtful and earnest attempt to respond to – and to reconcile competition between – charges of employment discrimination made on behalf of black, female, and Spanish surnamed workers and applicants," District Judge Sam C. Pointer, Jr., signed and entered the decrees later that same day. *Id.* The purpose of the consent decrees was and is to increase the promotional and transfer opportunities of "minorities, females, and longer service employees," and to ensure equal treatment of all employees within a given plant.

Consent Decree I, the subject of the petition, takes the form of a permanent injunction and deals with matters which, in general, are the subject of collective bargaining between the companies and the Union. The decree provided for a restruc-

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[1]Allegheny-Ludlum Industries, Inc.; Armco Steel Corporation; Bethlehem Steel Corporation; Jones & Laughlin Steel Corporation; National Steel Corporation; Republic Steel Corporation; United States Steel Corporation; Wheeling-Pittsburgh Steel Corporation; Youngstown Sheet & Tube Company.

turing of seniority rules and regulations, primarily using plant continuous service as a base. *The decree expressly provides, however, that the parties are free to use "company continuous service or some greater measure of service length than plant continuous service."*[2] Consent Decree I also specifies procedures for promotions, transfers, layoffs, and recalls, and provided for a back-pay fund of $30,940,000.00, along with guidelines for calculating and disbursing awards to individual employees affected by alleged past discrimination. 63 F.R.D. at 3.[3]

Recognizing that "general standards may require tailoring to meet local problems and that experience may indicate the inadequacy of some of the remedial steps," the parties, in Consent Decree I, established a structure of Implementation Committees, composed of company, union, and minority members, at each affected facility, as well as an Audit and Review Committee, which is national in scope. 63 F.R.D. at 3. The Audit and Review Committee is composed of five members from the companies, five members from the Union, and one government representative. The primary functions of the committee, as stated in Consent Decree I, are: (1) to review the implementation at each plant or facility of the objectives and procedures established by the decrees to ensure compliance therewith; and (2) to propose "corrective steps" at any plant or facility to

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[2]In the early days of Title VII, the steel companies, as well as other manufacturers throughout the nation, used various measures of seniority, including occupational seniority, line of progression seniority, and departmental seniority, which often resulted, by their operation, in fewer job opportunities for blacks. *See, e.g., United States v. United States Steel Corp.*, 371 F.Supp. 1045, 1051 (N.D. Ala. 1973), *order denying back pay vacated and remanded with directions*, 520 F.2d 1043 (5th Cir. 1975), *cert. denied*, 429 U.S. 817 (1976); *Pettway v. American Cast Iron Pipe Co.*, 494 F.2d 211, 216 (5th Cir. 1974); *Johnson v. Goodyear Tire & Rubber Co.*, 491 F.2d 1364, 1373-74 (5th Cir. 1974). To remedy this situation, "plant age," or some broader measure of seniority, was instituted for promotion, transfer, layoff, and recall purposes. *Id.*

[3]Consent Decree II deals with employment matters which are, essentially, company-controlled and not normally subject to collective bargaining agreements. For purposes of this case, only Consent Decree I is relevant.

overcome any shortcomings in the decrees or their implementation. In short, the decrees provide that the ongoing application and implementation of their numerous, specific provisions "shall be subject to the review of the Audit and Review Committee."

Consent Decree I further provides that its terms, including the provisions relating to the Audit and Review Committee, are incorporated in and constitute a part of the defendants' Basic Labor Agreement:

> *Effect on Collective Bargaining.* The terms of this Decree shall be fully binding on the Companies and Union as defined in paragraph 2, and the *arrangements* provided herein are hereby made a part of the defendants' Basic Labor Agreement as though expressly incorporated therein, the provisions of any such Basic Labor Agreement, local seniority agreement, practice or arrangement to the contrary notwithstanding. Provided, however, nothing in this decree shall operate to prevent the Companies and the Union from pursuing normal collective bargaining related to areas covered by this Decree so long as nothing done therein shall be inconsistent with this Decree. (emphasis added).

Finally, under Consent Decree I, jurisdiction was retained by the district court "for the purpose of issuing any additional orders or decrees needed to effectuate, clarify or enforce the full purpose and intent of this Decree." Jurisdiction was retained because, in the words of Judge Pointer, "[t]he decrees may require clarification in some particulars and, indeed, as administration of the decrees continue, there will doubtless be problems which were not considered or anticipated by the parties or which run counter to the expectations during negotiations." 63 F.R.D. at 6.

Shortly after entry of the decrees, various individuals and organizations petitioned to intervene for the purpose of vacating the consent decrees. The intervenors' claims were rejected by the district court, and they then appealed. 63 F.R.D. at 8. On appeal, the Fifth Circuit affirmed the judgment of the district court, holding that "the settlement has not been shown

to be in any respect unlawful or improper, and hence its terms, conditions, and benefits must go forward immediately in their entirety." *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 834 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976). With respect to the Audit and Review Committee, the Fifth Circuit stated as follows:

> The decrees must be made to function in varying and peculiar situations in accordance with the parties' ambitious objectives. Furthermore, the parties contemplated that unforseen interpretive issues will inevitably arise and require resolution. With these considerations in mind, the decrees provide for the establishment of implementation and enforcement procedures. . . . *The Audit and Review Committee,* established under paragraph 13 of Consent Decree I, *is the hub mechanism* in the decrees' system of *continuing* review, enforcement, and compliance. . . . It meets regularly to oversee compliance with the decrees and to resolve disputes which come before it. . . . The committee may propose remedial steps at any plant in order to overcome deficiencies in either the decree or its results.

517 F.2d at 835-36 (emphasis added).

The Fifth Circuit concluded its opinion by stating that "the parties have expressed a preference for a scheme which contemplates ongoing voluntary compliance in an unusual day-to-day atmosphere of self-government," 517 F.2d at 874, and that "these consent decrees are consistent with the public interest, represent a sound and reasonable exercise of the discretion possessed by the executive agencies, and implement the policies of Title VII and related laws to an exceptionally thorough degree." 517 F.2d at 881.

On December 4, 1984, the companies and the Union filed a joint motion for the entry of Amendment No. 11 to Consent Decree I. The purpose of the motion was to add "the newly constructed Fairfield Seamless Pipe Mill of the United States Steel Corporation ("the Pipe Mill") to the plants listed in paragraph 3(c) of that decree, thereby subjecting that plant to the requirements of that decree and Consent Decree II, and to the jurisdiction of the Audit and Review Committee." The

Audit and Review Committee unanimously recommended to the district court that the joint motion be granted. However, *and contrary to the assertion throughout the petition,* by endorsing Amendment No. 11 to Consent Decree I so as to subject the Pipe Mill to the requirements of that decree, neither the Audit and Review Committee nor counsel for the government approved the initial manning agreements regarding the Pipe Mill entered into between U. S. Steel and the Union, including the July 16, 1984 memorandum of understanding. Furthermore, and again, contrary to petitioners' assertion, the July 16, 1984 memorandum of understanding was the first agreement establishing a seniority arrangement for Pipe Mill employees, and specifically provided that it would be implemented *only* upon review and approval by the Audit and Review Committee.

The Audit and Review Committee, upon obtaining jurisdiction over the Pipe Mill upon the entry of Amendment No. 11, intended to "review and pass on whether the remaining portions of those agreements, as well as the other further agreements which may have been negotiated concerning that facility, are consistent with the purpose and intent of Consent Decree I and its specific provisions." Accordingly, based on the consent of the parties and the recommendation of all members of the Audit and Review Committee, the amendment was granted and the Pipe Mill was added "as one of the listed plants of the defendant United States Steel Corporation." Upon entering the amendment, the district court ordered the Audit and Review Committee to "oversee and assure the proper implementation of the consent decrees at the Fairfield Seamless Pipe Mill, including the establishment of appropriate plant continuous service dates for bargaining unit employees manning that facility."

On March 28, 1985, the Audit and Review Committee rendered its decision on the Pipe Mill manning agreements, including the July 16, 1984 memorandum of understanding. To ensure compliance with the purpose of the consent decrees — to increase the promotional and transfer opportunities of "mi-

norities, females and longer service employees," and to ensure equal treatment of all employees within a given plant – the Audit and Review Committee ruled that, "effective April 1, 1985, the Pipe Mill plant continuous service date of every Pipe Mill plant employee holding seniority rights in that plant as of March 31, 1985, shall be that employee's Fairfield Works continuous service date." The Audit and Review Committee reasoned that Fairfield Works seniority, which had been negotiated by U. S. Steel and the Union for Local 1013 employees only, should be applied to all Pipe Mill employees, because as part of Consent Decree I, the parties agreed that all persons in a particular plant should be treated the same and required to calculate their continuous service for seniority purposes in a common manner. Faced with a difference in treatment between Local 1013 employees and non-Local 1013 employees at the Pipe Mill, and the Union's concern over this difference in treatment, the Audit and Review Committee determined that all Pipe Mill employees, not just Local 1013 employees, should enjoy the longer term of seniority negotiated by U. S. Steel and the Union. The committee's decision was unanimous, with U. S. Steel's representative and the Union's representatives serving on the committee voting in favor of works seniority.

On April 26, 1985, Michael Wallace, et al., petitioners herein, filed a motion to intervene with the district court, alleging that "the Audit and Review Committee's departure from plant service is a violation of the Consent Decrees, the Basic Labor Agreement and the Local Seniority Agreement." The intervenors sought injunctive relief "enjoining the Audit and Review Committee from use of works seniority" and a declaration that "plant continuous service be declared to be the *only* appropriate measure of seniority at the Pipe Mill."

A hearing was held on June 18, 1985, during which the purported intervenors were given ample opportunity to set forth their position. (App. 1-2). At the hearing, Judge Pointer stated that in 1974 the Audit and Review Committee became a part of the collective bargaining process, as did both consent decrees, and that "the Consent Decree provides that at a *mini-*

mum there should be plant continuous service and that this does not in any way preclude a longer or broader measure of seniority." Thereafter, Judge Pointer entered an order and memorandum opinion granting the motion to intervene, but concluded that the intervenors' complaint failed to state a claim upon which relief could be granted. In dismissing the complaint, the court stated that "[t]he March 28, 1985 Committee decision is not in conflict with the purposes of Consent Decree I. The establishment of the Fairfield Works continuous work date as a basis for seniority is entirely consistent with this decree and the court's approval of Amendment Eleven." (App. 4-5). Judge Pointer's decision was summarily affirmed by the Eleventh Circuit on June 20, 1986. (App. 6).

REASONS FOR DENYING THE WRIT

Petitioners have failed to present any "special and important reasons" for the issuance of a writ of certiorari. Sup. Ct. Rule 17. The decision by the court below is not in conflict with any decision of another federal court of appeals or any decision of this Court. The decision below simply does not present any issue of substantial importance warranting consideration by the Court.

I. The Audit And Review Committee's Decision, Which Is Entirely Consistent With Consent Decree I, Did Not Usurp The Collective Bargaining Process.

Petitioners argue that the Court should issue a writ of certiorari because the Audit and Review Committee's decision usurped the collective bargaining process. Petitioners' argument is totally without merit.

Section 203 (d) of the Labor Management Relations Act of 1947, 29 U.S.C. § 173 (d), provides that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of disputes arising over the application or interpretation of an existing collective bargaining agreement." This Court has held that this policy "can

be effectuated only *if the means chosen by the parties* for settlement of their differences under a collective bargaining agreement is given full play." *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 566 (1960) (emphasis added).

A consent decree, which implements the public policy in favor of settlement, is a compromise between the parties to the agreement. *Local No. 93 v. City of Cleveland*, ____ U.S. ____, 106 S.Ct. 3063, 3072-75 (1986). In this case, the compromise entered into between the parties — the government, the companies, and the Union — is reflected in Consent Decree I. By agreement, the consent decrees in general, and the Audit and Review Committee in particular, which is composed of representatives from the government, the companies, and the Union, and which has the function of ensuring that seniority arrangements are in compliance with Consent Decree I, constitute a part of the defendants' Basic Labor Agreement. Thus, U. S. Steel and the Union, in both Consent Decree I and the Basic Labor Agreement, agreed to give the committee the authority to review the seniority arrangement in issue.

Furthermore, U. S. Steel and the Union devised the term of seniority that the committee extended to all Pipe Mill employees. U. S. Steel and the Union had negotiated a term of seniority longer than plant service, which they had a right to do under both Consent Decree I and the Basic Labor Agreement, but applied it only to one group of employees, Local 1013 employees. The Audit and Review Committee, which simply followed the decree's requirement that all persons in a particular plant should calculate their continuous service for seniority purposes in a common manner, rendered its decision only after: (1) the normal collective bargaining process had been exhausted at the local level; and (2) a dispute under the consent decree was left unresolved. Hence, contrary to the petitioners' assertion, the Audit and Review Committee's decision was not imposed by an uninvited governmental official, but rather by an entity given the power to resolve such disputes by the parties to the collective bargaining agreement. This Court

has approved similar arrangements in collective bargaining agreements, holding that such arrangements are consistent with the public policy in favor of peaceful settlement of labor disputes through the process of collective bargaining. *See, e.g., Humphrey v. Moore,* 375 U.S. 335 (1964) (joint conference committee established in the collective bargaining agreement to resolve disputes, including seniority disputes); *General Drivers, Local No. 89 v. Riss & Co., Inc.,* 372 U.S. 517 (1963) (joint conference committee established in the collective bargaining agreement to resolve disputes between the parties). In light of the foregoing, the "usurpation" issue raised by petitioners does not present any special and important reason for the issuance of a writ of certiorari.[4]

II. The Decision By The Court Below Is Not In Conflict With Any Decision Of This Court.

Petitioners also argue that the Court should issue a writ of certiorari because the decision by the court below is in conflict with this Court's decisions in *Firefighters Local Union No. 1784 v. Stotts,* 467 U.S. 561 (1984); *W. R. Grace & Co. v. Local Union No. 759,* 461 U.S. 757 (1983); and *International Bhd. of Teamsters v. United States,* 431 U.S. 324 (1977). Like their other arguments, this final argument by petitioners is also without merit; there is simply no conflict in this case.

In *Stotts,* this Court overturned an order enjoining the City of Memphis from laying off firefighters in accordance with a seniority system established in a collective bargaining agreement. The district court's order was intended to prevent the layoffs from having a negative effect on minority gains made under a previous consent decree setting hiring and promotion

[4]Because Consent Decree I, as well as the defendants' Basic Labor Agreement, allows the parties, in structuring seniority systems, to use "company continuous service or some greater measure of service length than plant continuous service," it simply cannot be said that the use of Fairfield Works seniority as a basis for seniority at the Pipe Mill is inconsistent with Consent Decree I. As mentioned above, the decree itself expressly provides that a greater measure of seniority than plant service can be used in structuring seniority systems.

goals for minorities. The Court simply held that the order was neither authorized by the original consent decree nor a legitimate modification of that decree which could be imposed upon the City *without its consent.* While there are obviously numerous distinctions between the facts in *Stotts* and the facts of this case, the most significant factor distinguishing this case from *Stotts* is that here the consent decree and seniority arrangements were voluntarily entered into between the parties. In *Stotts,* on the other hand, the City *objected* to the district court's modification of the seniority system. *Stotts,* therefore, dealt with the power of a court to modify a consent decree over the objection of one of the parties. In contrast, in this case there was no such objection by any party, and the Audit and Review Committee's decision was fully authorized by both the consent decree and the collective bargaining agreement.

Moreover, *Stotts* must be read in light of the Court's decision in *United Steelworkers of America v. Weber,* 443 U.S. 193 (1979). In *Weber,* the Court held that an employer and union do not violate Title VII by voluntarily adopting a reasonable race-conscious plan to increase the employment opportunities of minorities, even when the plan has the effect of overriding the seniority of non-minorities. 443 U.S. at 208-09. Given this holding, *Weber* precludes any notion that Title VII absolutely forbids voluntary action by an employer and union to the detriment of the seniority of non-minority workers. *See also Local No. 93 v. City of Cleveland,* ..... U.S. ....., 106 S.Ct. 3063, 3077 (1986) ("a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial"). There is nothing in either *W. R. Grace* or *Teamsters* to the contrary. *W. R. Grace & Co. v. Local Union 759,* 461 U.S. 757, 771 (1983) (employer and union, together, can alter a collective bargaining agreement); *International Bhd. of Teamsters v. United States,* 431 U.S. 324 (1977) (no consent decree involved). Hence, because there is no conflict between the decision below and any decision of this Court, the petition should be denied.

CONCLUSION

For the foregoing reasons, this case does not present any issue of substantial importance that merits consideration by the Court. The decision below is not in conflict with any decision of another federal court of appeals or any decision of this Court, and does not otherwise present any "special and important reason" for the issuance of a writ of certiorari. Accordingly, the petition should be denied.

Respectfully submitted,

F. A. Flowers, III

Counsel for Respondent,
USX Corporation

OF COUNSEL:

BURR & FORMAN
3000 SouthTrust Tower
Birmingham, Alabama 35203
(205) 251-3000